

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO

COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
1:36 p.m.
Monday, October 19, 1998

TRIAL - VOLUME 98

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON

ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.

On behalf of Defendant The Council for Tobacco Research

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(APPEARANCES - Continued)

GREENBERG TRAUIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.

On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ

JOSE MARTINEZ, ESQ.

On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN

AARON MARKS, ESQ.

NANCY STRAUB, ESQ.

On behalf of Defendants Liggett Group
and Brooke Group

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1 (Whereupon, the following proceedings were had:)

2 THE BAILIFF: Bringing in the jury.

3 (The panel of jurors entered the courtroom.)

4 THE COURT: Please be seated. Everybody have
5 their pads? All right. I think we can resume.

6 Counsel?

7 MR. ROSENBLATT: Good afternoon, ladies and
8 gentlemen.

9 I had introduced our class representatives
10 this morning. One gentleman who I said had Buerger's
11 disease, Ray Lacey, is the gentleman there in the first
12 row in the gray suit. So, I wanted to introduce him.
13 He was not here earlier.

14 Okay. I'm going to pick up talking about
15 another major area for your consideration during the
16 first phase of this case, and that is the subject of
17 addiction.

18 I think it's fair to say that, when we talk
19 about the main areas that you're going to be deciding
20 in Phase I, there are really three main areas:
21 Causation. Does cigarette smoking cause lung cancer
22 and a whole host of other diseases? That's one issue
23 for you.

24 Another issue for you, is nicotine addictive?
25 And then the third issue for you will be what we say is

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1 the misconduct of the tobacco industry for many, many
2 decades which would justify the imposition of punitive
3 damages.

4 You will not in this first phase, for
5 example, be learning the specifics about Dr. Engle or
6 Frank Amodeo or Ray Lacey, how old they were when they
7 began to smoke, how heavy of a smoker were they, when
8 were they first diagnosed with a given disease. Those
9 are not issues in the first phase of the case.

10 As I stay, the generic issues will have to do
11 with causation, addiction and the conduct of the
12 tobacco industry.

13 Okay. Specifically on the subject of
14 addiction, I make a flat statement to you, which I
15 believe the evidence will establish overwhelmingly, and
16 that is: Nicotine is addictive. Nicotine is
17 addictive. And some of the best evidence backing up

18 that statement will come from tobacco industry
19 documents. The evidence will show that one of the
20 great cons of the 20th century in terms of keeping
21 information hidden from the consumer is this whole
22 subject of addiction.

23 In the 1950s and in the early 1960s, their
24 own documents will show that they knew nicotine was
25 addictive. They hid this from the public. That was

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1 their choice, to hide this from the public. They hid
2 it from the public health authorities, and they
3 certainly hid it from the Surgeon General of the United
4 States.

5 The Surgeon General of the United States did
6 not make a formal pronouncement that nicotine was
7 addictive until 1988, ten years ago. And as I say, the
8 evidence will show that the tobacco companies knew of
9 it years and years before.

10 There is a tobacco industry document which
11 says, quote -- and this is not just some nobody. This
12 is at a relatively high level of the company saying,
13 quote --

14 MR. HEIM: Your Honor, objection. We have an
15 understanding about the use of documents in this case
16 in the opening.

17 May we approach?

18 THE COURT: Yes, we better.

19 (Proceedings were had at sidebar.)

20 MR. ROSENBLATT: You will see in this case
21 tobacco industry documents which acknowledge that: We
22 are in the business -- we are in the business of
23 selling nicotine, an addictive drug.

24 In-house, when they're talking privately to
25 each other, this is a forthright acknowledgment: We

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1 are in the business of selling nicotine, an addictive
2 drug. And there is also an acknowledgment that no one
3 ever became a smoker by smoking cigarettes without
4 nicotine.

5 They know and the public health world now
6 knows that nicotine's the ballgame with cigarettes.
7 Although I said that there are 4,000-plus chemical
8 compounds in a cigarette, the absolute hook, the hook
9 that keeps people pulling out that pack, opening the
10 pack, taking out a cigarette, lighting up, putting the
11 pack back, is nicotine. The addiction to nicotine.

12 The evidence will show no one chooses to
13 become addicted. No one chooses to become addicted.
14 The evidence will show that very few people take up
15 smoking with the idea that they're going to become a
16 lifetime smoker. Kids take it up, they are --
17 pressure, they don't know what to do with their hands,
18 they want to be cool. They want to imitate an athlete
19 or something. And the tobacco companies understand the
20 psychology. Or they'll smoke until they are done with
21 their exams. They will smoke until they get married.
22 They will smoke until they have a baby.

23 People do not take up smoking intending to
24 become life-long customers of Philip Morris. What

1 expression that we've all heard: Chain smoker.
2 In most people's minds, a chain smoker is a
3 guy or a woman, (indicating) this is out, you need
4 another one. And what you're going to learn from this
5 case, the addiction is, in fact, it's a chain. It's a
6 chain. You can't do without that cigarette.
7 The evidence will show that the tobacco
8 companies, they don't want a smoker for six months.
9 They don't want a smoker for two years. They want that
10 13-year-old to be smoking when he's 65, when he's 70.
11 That's where the money is. That's where the profit is.
12 A life-long customer for their products.
13 The tobacco documents will acknowledge that
14 the cigarette was a cleverly-designed device to deliver
15 a dose unit level of nicotine. Without nicotine, they
16 are out of business. Without nicotine, there is no
17 reason to smoke; there is no compulsion to smoke.
18 And ladies and gentlemen, the evidence will
19 show that when they start making a comparison that --
20 well, it's addictive like chocolate or it's addictive
21 like coffee, that is a strategic attempt to trivialize
22 the addiction. There is no Surgeon General's Reports
23 about chocolate and about coffee.
24 The addiction to cigarettes is similar in
25 many ways to the addiction to heroin and to the
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1 addiction to cocaine. When you're talking to doctors
2 and you're talking to scientists, that's the
3 comparison, not the comparison to chocolate or watching
4 football on television. It is a real addiction.
5 And the proof is in the pudding. You will
6 hear evidence about people that have had throat cancer,
7 laryngeal cancer, and they have voice boxes; they can't
8 talk without an artificial voice box. They still
9 smoke. They know the cigarette is why they have an
10 artificial --
11 MR. HEIM: Objection, Your Honor.
12 THE COURT: Overruled.
13 MR. ROSENBLATT: They know the reason why
14 they take this instrument up to their neck is the
15 cigarette. They know the cigarette is their enemy, and
16 they can't stop.
17 There are people with lung cancer that
18 continue to smoke. There are doctors who know the
19 cigarette is a killer, and they continue to smoke
20 because they are addicted.
21 There are products on the market, Nicorette,
22 Nicotrol, Nicoderm, Zyban, these are expensive. Put
23 out by pharmaceuticals, and they are big sellers
24 because nicotine is addictive.
25 When you talk about the manipulation of
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1 nicotine, ladies and gentlemen, you will learn in this
2 case that when tobacco people, the PhDs in chemistry,
3 the scientists that they employ, and they start talking

4 about smoke chemistry and ammonia technology, it's
5 beyond the wild imagining of the average person, the
6 sophistication and the level of expertise that goes
7 into creating that final engineered product.

8 You will find out that it is child's play for
9 them to manipulate nicotine and to hook smokers, and
10 that's part of what I will be discussing with you.
11 Take out the cigarette. You light it. You inhale the
12 smoke into your lungs. It's absorbed into the lungs.

13 Where does it go from the lungs? The blood
14 stream. And where does the blood stream take the
15 nicotine? To the brain. And that's the key. That's
16 the key. That's the key to the addiction.

17 And the trick, the trick is to get the
18 nicotine to the brain as quickly as possible with as
19 much kick as possible. They talk in their documents
20 kick, impact.

21 Very interesting phenomenon in the tobacco
22 industry. If you look historically at the tobacco
23 industry, for a while Chesterfield was the most popular
24 brand. Camel was very popular for a while. Winston
25 was number one for a while. But all of a sudden in the

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1 1960s, Marlboro became king. Marlboro became king,
2 number one, the number one seller. And it has
3 remained. It has remained the number one most popular,
4 best seller cigarette. That's a Philip Morris product.
5 It was Marlboro that made Philip Morris into the king
6 of the hill, where they became the number one tobacco
7 company.

8 And obviously, Winston, which had been number
9 one, is an R.J. Reynolds product. They are business
10 people. They are business people. So, they want to
11 find out, well, what is Marlboro's secret? Why is
12 Marlboro selling like hot cakes, and Winston has
13 trailed off?

14 And also Kool, made by Brown & Williamson,
15 that became very popular in the 1960s, '70s. That
16 became one of the most popular brands.

17 Let me explain a concept, because you'll be
18 told that they are competitors. And in a sense, that's
19 absolutely true. It's absolutely true. Brown &
20 Williamson wishes their cigarettes was number one
21 instead of Marlboro. R.J. Reynolds wishes Winston was
22 number one instead of Marlboro. So, in that sense yes,
23 they are competitors.

24 But on the issues relating to health,
25 addiction and conduct, they are unified. Just as in

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1 that Frank Statement, the Tobacco Industry Research
2 Committee, they are an industry.

3 They figured out the key to Marlboro's
4 success. Transforming the nicotine into a freebased
5 form got it to the brain quicker and with more impact.

6 There's two kinds of nicotines that the
7 scientists talk about, two forms. There's only one
8 nicotine, but there's two forms of nicotine. One is
9 called bound, and one is called free or freebase.

10 Now, to the average person, this is

11 meaningless, just words. Scientifically, the
12 difference is that the nicotine in the free form, as
13 opposed to the bound form, gets to the brain quicker
14 and hits the smoker with a bigger impact, the bigger
15 kick, the bigger jolt. And that's why the smoker keeps
16 coming back and buying that particular brand.

17 Free nicotine is more rapidly absorbed, and
18 the smoker perceives this as an enjoyable nicotine
19 kick. And this is in the documents, because Winston
20 was studying. R.J. Reynolds was studying what is the
21 secret to Marlboro's success, what is the secret to
22 Koool's success, and they found out.

23 Now, of course, they can't duplicate Marlboro
24 exactly because there are additives and flavorings.
25 It's like the formula to Coca-Cola. It's a secret

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1 formula. But on the nicotine impact they found out the
2 secret to Marlboro's success. And the documents talk
3 about the psychopharmacology of nicotine. There is a
4 psychological dependence on nicotine, and there is a
5 physical dependence on nicotine.

6 Now, they found out something else; that when
7 ammonia is added to the tobacco -- and this will be a
8 little confusing, and it's confusing to me, and I've
9 been over it 40 times. But there will be chemists and
10 scientists in to explain the ammonia and the pH -- pH
11 refers to the acidity of the smoke. But I'm trying to
12 get across a general concept.

13 When ammonia is added to the tobacco, the pH
14 in the smoke rises, and the ammonia acts to chemically
15 convert the bound nicotine into the free form or
16 freebase nicotine. And from a business standpoint,
17 that is an incredible achievement, because you've taken
18 the bound, kind of the conservative nicotine, and with
19 ammonia manipulation and pH manipulation, you've
20 transformed the nicotine into the free form, which gets
21 through the blood stream quicker, to the brain quicker,
22 the jolt, the kick, and that's what the smoker likes,
23 and that's what keeps the smoker addicted.

24 They are so sophisticated that the tobacco
25 industry had the technology to reduce the overall

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1 nicotine to make the consumer believe, well, nicotine
2 is going down -- hey, great, nicotine is going down --
3 yet at the same time increase the impact of what was
4 there. You can have less nicotine if it's in the
5 freebase form. That gets to the brain quicker than
6 more nicotine in the bound form. And they mastered,
7 they mastered the technology beautifully.

8 Now, another area of the tobacco company's
9 deliberately fooling the American public, obviously a
10 lot of smokers became worried: Am I going to be one of
11 the lucky ones? Am I going to be one of the unlucky
12 ones? I love to smoke. I'm addicted. I love to
13 smoke. I like the taste, whatever, but gee whiz, I
14 would like to smoke a cigarette that has less chance of
15 causing a serious disease.

16 So, the customer was sold a bill of goods
17 about less tar and nicotine; that somehow if you get a

18 cigarette with less tar and nicotine than some other
19 cigarette, it's less hazardous to your health.
20 But when you ask the tobacco companies about
21 that, they say, oh, no, no, no, we never -- we don't
22 say that less tar and less nicotine is less hazardous.
23 It's just a question of taste. There are just some
24 smokers that like less tar and nicotine. Knowing full
25 well that when they are giving that answer, that

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1 millions of American smokers believe less tar and less
2 nicotine is less hazardous to their health. And this
3 is the psychology of reassuring hooked smokers.

4 The documents in this case, ladies and
5 gentlemen, will show efforts to gain the public trust
6 amidst in-house strategies of deceit. How can we
7 appear to be telling the American people the truth?
8 How can we make the consumer, the smoker, think we're
9 being straight with them when, in reality, they are
10 lying?

11 MR. MOSS: This is argument, Your Honor.

12 MR. ROSENBLATT: That's what the documents --

13 MR. MOSS: Your Honor, we object. This is
14 argument.

15 THE COURT: Overruled.

16 MR. ROSENBLATT: The documents will show
17 something very basic; that one of the main reasons the
18 tobacco industry cannot be honest and forthright about
19 addiction is then their argument about free choice goes
20 down the drain.

21 MR. HEIM: Now that is argument, Your Honor.

22 THE COURT: It is, I agree. Sustained.

23 MR. ROSENBLATT: They understand that the
24 American smoker wants to believe that the supplier, the
25 tobacco company, is interested in the health of

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1 American smokers. And you will search the documents in
2 vein to find any interest by any tobacco company in the
3 health of the American smoker, just as you will never
4 find a document which says maybe we should recommend to
5 the heavy smokers that they not smoke so much; that the
6 two-pack or three-pack-a-day smokers go down to one
7 pack.

8 MR. MOSS: Your Honor, may we -- we object.
9 Number one, this is preemption. Two, it's argument.

10 THE COURT: Do you want to talk?

11 Do you want to discuss it?

12 MR. HEIM: Yes, Your Honor. We want to go to
13 sidebar.

14 (Proceedings were had at sidebar.)

15 THE COURT: After some discussion with
16 counsel, the Court instructs the jury to disregard the
17 last statement of counsel for the plaintiff.

18 Go ahead.

19 MR. ROSENBLATT: As I was saying, the
20 documents will show that the tobacco companies cannot
21 be honest about addiction because then their argument
22 about free choice would go down the drain.

23 MR. HEIM: Objection, Your Honor.

24 MR. ROSENBLATT: No, absolutely not.

1 sidebar.
2 (Proceedings were had at sidebar.)
3 MR. ROSENBLATT: As I was saying, the
4 evidence and the documents in this case are going to
5 show that the tobacco industry knew they had a problem;
6 that if they were to admit that nicotine is addictive,
7 it would weaken and destroy their argument about free
8 choice, which was a very basic fundamental argument to
9 them in their approach to the public.
10 And also if you admit, which they were
11 admitting in the late '50s and early '60s, that
12 nicotine was a drug -- the reason why the tobacco
13 industry could not admit that to the public is because
14 the implication would then be that the tobacco
15 companies would subject themselves to regulation by the
16 Food and Drug -- by the Federal Food and Drug
17 Administration.
18 Now, there is, in advertisements, there is
19 usually a tiny sentence down in the advertisement which
20 talks about 0.9 milligrams of nicotine, 0.11 milligrams
21 of tar, average by FTC method. If you study an
22 advertisement, you're going to see that, that kind of
23 language.
24 The FTC is the Federal Trade Commission. The
25 point I am making is that the sophistication of the
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1 tobacco industry in converting bound nicotine to
2 freebase nicotine made the findings of the smoking
3 machines of the Federal Trade Commission meaningless --
4 MR. HEIM: Objection, Your Honor. I would
5 like to approach.
6 THE COURT: Overruled.
7 MR. ROSENBLATT: -- meaningless and deceptive
8 because the numbers are a joke. The numbers are not
9 valid.
10 MR. HEIM: Your Honor --
11 MR. MOSS: Objection.
12 THE COURT: Sustain the remark "a joke."
13 Strike it.
14 MR. HEIM: This is all preempted.
15 MR. MOSS: Your Honor, we are in an area of
16 federal regulation.
17 THE COURT: Overruled, sir.
18 MR. ROSENBLATT: The FTC doesn't have real
19 human beings smoking. They've got smoking machines
20 smoking, and they do not measure the free nicotine
21 versus the bound nicotine. And the evidence will show
22 that, for the most part, the FTC numbers are
23 meaningless.
24 MR. MOSS: Objection, Your Honor.
25 THE COURT: Overruled.
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1 MR. ROSENBLATT: And in terms of addiction,
2 if a person is a pack-a-day smoker, 20 cigarettes to a
3 pack, that is 7,300 cigarettes in a year. Would the

4 average, intelligent person do that unless it were
5 addictive?

6 MR. MOSS: Objection, Your Honor. That's
7 argumentative.

8 THE COURT: Overruled.

9 MR. ROSENBLATT: Now, Brown & Williamson
10 Tobacco Company, which is a subsidiary of the British
11 American Tobacco Company, but the defendant in this
12 case is Brown & Williamson Tobacco Company, who bought
13 The American Tobacco Company.

14 American Tobacco Company doesn't exist
15 anymore. It's been bought by Brown & Williamson. They
16 developed a super-duper tobacco plant which they called
17 Y-1.

18 MR. MOSS: May we approach, Your Honor?

19 THE COURT: Yes.

20 (Proceedings were had at sidebar.)

21 MR. ROSENBLATT: The evidence will show that
22 the Brown & Williamson Tobacco Company developed a
23 super-duper tobacco plant called Y-1. And what kind of
24 plant was this? It was genetically-engineered tobacco
25 to significantly increase the nicotine content of the

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1 tobacco plant itself, and it succeeded. And Brown &
2 Williamson is using Y-1 in its products.

3 Now, many of the documents that you will see
4 in this case have only in the last few years come to
5 light. Before these documents were made public, they
6 were secret, and much of the vital information known by
7 the tobacco companies about addiction was deliberately
8 secreted from the American public and from the public
9 health officials.

10 And these defendants have known for 40 years
11 that nicotine is a drug and that it is addictive. And
12 the essence of the conspiracy and fraud of these
13 defendants has been to get smokers hooked on nicotine
14 as young as possible and make life-long customers of
15 them. That's the essence of their conspiracy against
16 our class and against the American people.

17 This is an industry. As smokers get older
18 and smokers die and smokers quit because they are sick
19 or for other reasons, there is only, ladies and
20 gentlemen, there is only one source --

21 MR. HEIM: Objection, Your Honor, argument.

22 MR. ROSENBLATT: -- of replacement smokers --

23 THE COURT: I don't know what he's saying.

24 MR. ROSENBLATT: -- and that is kids.

25 MR. HEIM: Pure argument.

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1 THE COURT: Well, we might be getting into
2 it.

3 MR. ROSENBLATT: I'm going to give a
4 statistic right now.

5 THE COURT: Okay. That's fine.

6 MR. ROSENBLATT: The evidence will show that
7 youth smoking in this country rose 73 percent. 73
8 percent, in the decade -- in the eight years between
9 1988 --

10 MR. KIRBY: Objection, Your Honor.

11 MR. ROSENBLATT: -- and 1996.
12 MR. KIRBY: May we approach?
13 THE COURT: We can do this every time he
14 opens his mouth, but I don't want to do that.
15 MR. ROSENBLATT: That's their hope.
16 MR. MOSS: That comment is absolutely
17 improper. He knows the rule.
18 MR. ROSENBLATT: You do too.
19 THE COURT: Gentlemen, please. Come talk to
20 me.
21 Come talk to me.
22 (Proceedings were had at sidebar.)
23 MR. ROSENBLATT: As I said, the evidence will
24 show that youth smoking rose 73 percent between 1988
25 and 1996.

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1 The evidence will show that the tobacco
2 industry understands the only way they can stay
3 profitable is to hook kids. To hook young kids.
4 That's the market, to replace the older people who are
5 dying off and the quitters.
6 The evidence will show that every day, every
7 single day in America, 3,000 youngsters under the age
8 of 18 start to smoke. And the evidence will show
9 that's great news for the tobacco companies'
10 profitability and horrible news for everybody else.
11 THE COURT: Counsel, you want to hold on one
12 second while I reenergize this machine?
13 Okay. Yes, sir.
14 MR. ROSENBLATT: I'm going to talk briefly
15 about the Council for Tobacco Research. You recall
16 that in The Frank Statement in 1954 it was called the
17 Tobacco Industry Research Committee, and it became the
18 Council for Tobacco Research, which was a public
19 relations ploy of the tobacco industry.
20 Now, the evidence will show that these
21 defendants, Philip Morris, Reynolds, Lorillard, Brown &
22 Williamson, lied to the American smokers in 1954 when
23 they said the Tobacco Industry Research Committee would
24 objectively research all phases of tobacco use and
25 health.

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1 Commencing in 1954, the Tobacco Industry
2 Research Committee, which later became the Council for
3 Tobacco Research, was controlled by these defendants
4 and acted as a public relations arm of the tobacco
5 industry, distorting the truth about the dangers of
6 smoking and telling American smokers, their families
7 and the United States government, that smoking did not
8 cause lung cancer and other diseases.
9 You will see many press releases from the
10 Council for Tobacco Research, the Tobacco Industry
11 Research Committee lying to the American public about
12 these very issues, these issues of causation.
13 And these defendants, through the Council for
14 Tobacco Research, formed a special projects division
15 where sensitive research which they were doing or they
16 knew about or they contracted out, sensitive research,
17 which linked smoking to disease, was hidden and

18 suppressed from the American people and from the public
19 health authorities.

20 Both the Tobacco Industry Research Committee
21 and the Council for Tobacco Research were a fraud, a
22 public relations ploy of these defendants intended to
23 confuse smokers and to create doubt as to whether
24 smoking causes lung cancer and other diseases.

25 These defendants undertook a duty to American
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1 smokers in 1954 in this Frank Statement, a duty which
2 they have totally abandoned and twisted, and the
3 evidence will show that.

4 "We always have and always will cooperate
5 closely with those whose task it is to safeguard the
6 public health." They did not cooperate with Surgeon
7 Generals. They hid and suppressed information about
8 causation and about addiction.

9 Now, there is no question but that the
10 Council for Tobacco Research, the evidence will show,
11 has given money to good institutions, to good medical
12 schools. No question about that, and that interesting
13 research has been conducted.

14 But the evidence will show that the trick of
15 the Council for Tobacco Research was to get research
16 done in areas that had nothing to do with answering the
17 question does cigarette smoking cause disease.

18 They got involved with cells and molecules,
19 and cancer is a complicated disease. But not answering
20 the question on the minds of anyone who was a smoker or
21 who was thinking about becoming a smoker.

22 Documents will show that the tobacco industry
23 itself said about the Council for Tobacco Research:
24 This is the best insurance policy we can possibly have,
25 and if the Council for Tobacco Research did not exist,

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1 we would have to invent it. And they invented it in
2 1954 at the meeting at the Plaza Hotel. That's what
3 they invented, to again fool the American public.

4 Now, the Tobacco Institute is also -- that's
5 a public relations arm of Philip Morris and Reynolds
6 and Lorillard and Brown & Williamson, and it is run by
7 the tobacco companies. And the witnesses and tobacco
8 documents will establish that the Tobacco Institute is
9 a Washington, D.C. lobbying organization whose purpose
10 it is to help continue the phoney controversy as to
11 whether smoking causes disease.

12 You will review many publications from the
13 Tobacco Institute that state smoking does not cause
14 lung cancer; it's an open question; smoking is not
15 addictive, and other misrepresentations.

16 And we will present to you the deposition
17 testimony of current and former officers and employees
18 of the Tobacco Institute, all of whom deny that smoking
19 is responsible for a single American death, even though
20 the Centers for Disease Control, a federal governmental
21 agency with no ax to grind, says that over 400,000
22 Americans die every year as a result of smoking
23 cigarettes.

24 And historically the Tobacco Institute, any

1 the New England Journal of Medicine, the Journal of the
2 American Medical Association, all of the fine
3 periodicals, which is how doctors communicate with each
4 other, would send out press releases debunking it,
5 criticizing it, finding alleged flaws and trying to
6 create controversy and confusion on the part of the
7 American public.

8 I mention depositions because it's difficult
9 for me to know at this stage whether they are going to
10 bring in certain witnesses. So, I mean, we know
11 depositions have been taken of various witnesses like
12 the CEOs. Whether they choose to bring in the CEOs to
13 testify, I don't know. I have no way of knowing until
14 they get to their case, and either do they or they
15 don't.

16 But I want you to be aware that even if they
17 make the choice not to bring in CEOs, not to bring in
18 certain witnesses who work for the tobacco companies,
19 that in many instances we have the sworn testimony
20 through depositions.

21 In terms of the fraud and misconduct of the
22 tobacco industry, through the evidence and the many
23 tobacco documents, you will learn how sensitive
24 documents and research were deliberately shipped
25 overseas; that scientific research was done secretly in

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1 European laboratories with code words for cancer; that
2 incriminating documents or research got buried in
3 lawyers' files with claims of privilege; that tobacco
4 documents were destroyed; that any company research
5 that suggested a linkage between smoking and disease
6 was abruptly stopped.

7 And in many instances, the researchers were
8 fired. Company scientists were told to forget any
9 findings that were unfavorable to the industry on
10 issues of smoking and health.

11 Decisions were made among these defendants to
12 withhold critical information about smoking and health
13 and addiction in particular from the United States
14 government. And that started in the 1950s. These
15 defendants knew that smoking caused disease, tobacco
16 had carcinogens, and smoking was addictive. And this
17 is revealed in their very documents that only came to
18 see the light of day in recent years.

19 The good news is I'm nearing the end.

20 I want to go over some loose ends. You've
21 heard me say earlier this morning when I talked about
22 causation, cigarette smoking causes lung cancer, 100
23 percent, even though every smoker doesn't get it.

24 In a civil case, which this is -- this is not
25 a criminal case. Civil case, we have to prove our case

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1 by the greater weight of the evidence, which basically
2 means 51 percent. And that's a fundamental principle
3 that I want you to understand.

4 With respect to addiction and the subject of
5 quitting, again, I want there to be no confusion about
6 what our position is. It is 100 percent that nicotine
7 is addictive, even though we only have the burden of 51
8 percent. Nicotine is addictive. That is a fact.

9 However, however, I admit and I concede there
10 are some smokers -- we say relatively few, but without
11 question, there are some smokers, smoke 10 years, 15
12 years, pack a day, even two packs a day, go to the
13 doctor, he says, hey, I think I see a spot on your
14 lung, quit. And for some reason, they quit, what is
15 known as cold turkey. And they quit. They quit for
16 good.

17 There are some, a tiny percentage of smokers
18 who fall in that category, who can quit cold turkey.
19 That in no way contradicts the fundamental statement
20 that nicotine is addictive. And it in no way
21 contradicts the fundamental statement that the great
22 majority of long-term smokers have a great deal of
23 difficulty quitting.

24 And you'll hear statistics that in the last
25 40 years, 40 million people or 45 million people have

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1 quit smoking. The evidence will show that that is a --
2 wherever it comes from, that is a very deceptive
3 statistic, because the evidence will show that the
4 great -- first of all, the evidence is going to show
5 that the majority of smokers in America today would
6 like to quit if they could. Most smokers would like to
7 quit if they could.

8 The great majority of smokers have a history
9 of quitting, starting again, quitting, starting again,
10 the roller coaster. That's the history. Although
11 there are some people who can quit cold turkey, it's
12 very few. It's very few.

13 And just like some people can smoke 30 years
14 and not get lung cancer because of the immune system or
15 because of an individual genetic setup, there are some
16 smokers, because of how their bodies are constructed
17 and made up, are able to quit cold turkey. But that in
18 no way contradicts the fact that smoking, that nicotine
19 is addictive.

20 The concept of choice. The concept of, well,
21 people choose to smoke. And as I said earlier, no one
22 chooses to become addicted. The evidence will show the
23 great majority of kids who pick up a cigarette and
24 start smoking, they're not making any choice at all.
25 They're copying. They're copying.

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1 Nowadays the kids want to be like Mike. They
2 want to be like Mike Jordan or they want to be like
3 Sammy Sosa or they want to be like Mark McGwire. But
4 in years gone by, the kids who are -- who have been
5 smoking 30, 40, 50 years, they wanted to be like
6 Humphrey Bogart, John Wayne, James Dean, who always had
7 the cigarette dangling.

8 In this country, the evidence will show that
9 in order to vote, in order to marry, you've got to be a
10 certain age. And the reason for that is the American

11 society recognizes that children are not capable of
12 making an informed choice.
13 And the evidence will show that this is not a
14 product that you can misuse. You know, a car, you
15 drive 100 miles an hour, you are misusing the product.
16 Liquor, if you drink to excess, you are misusing the
17 product. This is a product which, used as directed,
18 which used as the tobacco companies recommend that
19 consumers use it, is addictive and is a killer.
20 The evidence will show that smoking is called
21 a pediatric disease by the medical and scientific
22 communities. And the reason it is is that the smoking
23 starts very young, although the disease doesn't
24 manifest itself til adulthood. It's a pediatric
25 disease. That's why several -- Dr. Richmond, who is a
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1 Surgeon General that I will have in here, is a
2 pediatrician. Dr. Koop, who got a lot of publicity
3 during the eight years of the Reagan administration, is
4 a pediatrician.
5 The essential position of the tobacco
6 companies is everybody in America knows or knew what
7 they deny. They deny cause --
8 MR. HEIM: Objection, Your Honor. Now this
9 is argument, Judge.
10 THE COURT: I think so. Sustained.
11 MR. ROSENBLATT: The evidence will show that
12 the American tobacco industry, the level of
13 sophistication, the level of expertise, is incredibly
14 impressive in terms of their research and development
15 departments, their engineering, what they can do to
16 this simple product from the tobacco leaf.
17 And they have the technology to make a safer
18 cigarette. And the evidence will show that companies
19 spent millions of dollars trying to make a safer
20 cigarette and never succeeded. No company ever
21 succeeded in making a safer cigarette that was a money
22 maker, that was profitable.
23 The evidence will show that all the efforts
24 to make a safer cigarette were essentially fake,
25 because by making a safer cigarette, the tobacco
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1 companies would have to admit that every cigarette that
2 existed before that was unsafe. And from a business
3 standpoint, they couldn't do that.
4 Ladies and gentlemen, the evidence in this
5 case will show these defendants manufacture cigarettes,
6 they promote them, they make them attractive and
7 appealing to youth and then want to walk away 30 years
8 later, when the 12-year-old is only 42 and suffering
9 from lung cancer.
10 The evidence will show that they are
11 responsible for this product which causes death, which
12 causes cancer and which is addictive. They understand
13 the psychology of youth. A 14-year-old kid -- you
14 can't tell a 14-year-old kid that he can have lung
15 cancer.
16 MR. MOSS: Your Honor, this is argument.
17 THE COURT: Sustained. Argumentative.

18 MR. ROSENBLATT: The evidence will show that
19 historically the tobacco industry has used their
20 superior knowledge and resources to exploit the
21 weaknesses of human beings.

22 And the evidence will show that the
23 misconduct, that the misconduct of the tobacco industry
24 will justify, at the conclusion of this case, a
25 decision by you to find and impose punitive damages.

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1 Not a specific amount, because that will not be part of
2 the first phase case. But as to whether the plaintiff
3 class is entitled to punitive damages, punishment
4 damages, against the tobacco companies, as a result of
5 their misconduct over the years.

6 And finally, ladies and gentlemen, after
7 you've heard my case, you've heard all my witnesses,
8 you've heard all their witnesses, you've seen the
9 documents, you've heard final argument, you get the
10 instructions from Judge Kaye on the law, you will have
11 a choice. You will have a choice between health and
12 public relations, between --

13 MR. KIRBY: Objection, Your Honor. Argument.

14 MR. ROSENBLATT: Between the truth --

15 THE COURT: Overruled at this point.

16 MR. ROSENBLATT: You will have a choice
17 between pure truth and calculated cleverness.

18 MR. HEIM: Objection.

19 MR. MOSS: Your Honor --

20 THE COURT: Just a moment.

21 I will sustain those comments.

22 MR. ROSENBLATT: On behalf of the Engle
23 class, which consists of thousands of Floridians
24 throughout the State of Florida, addicted smokers who
25 have contracted disease from this product, we are

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1 confident, we are confident that, after all is said and
2 done and you've heard the whole ball of wax, you're
3 going to make the right choice.

4 Thank you very much.

5 THE COURT: All right, folks. As we told you
6 earlier, we will break up the opening into two separate
7 days. Being it's already ten of three now, I know
8 there is another hour or two left in the day. But it
9 would seem to be a little bit inconvenient for counsel
10 for the defense to start their argument and then have
11 to break over the night.

12 So, I would like to have them present the
13 whole thing at one time. Two hours isn't going to make
14 that much difference. So, I will let them put on their
15 opening statement tomorrow, and they will do it in one
16 day and then we can start taking testimony.

17 You've heard now something about this case.
18 Although what counsel said was not evidence, nor should
19 it be considered by you as evidence, but merely a guide
20 post, a road map, a table of contents or whatever you
21 want to call it. It is about things which should be
22 coming up during the trial.

23 And I want you to consider the Court's
24 instructions regarding anything said by the lawyers

25 during opening statements. The evidence and the
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1 testimony in this case will come from the witness stand
2 and from the testimony of the witnesses and exhibits
3 produced in evidence and that will become evidence and
4 testimony.

5 Now, when you go home tonight, naturally your
6 folks at home are going to want to know what happened
7 down at the old courthouse. And you'd love to tell
8 them, but you can't. It would be totally improper if
9 you did discuss even the experience of being here for
10 opening statement or anything about the case.

11 If you just let them know that you are under
12 Court order, the Court's instruction, not to discuss
13 this case, I'm sure they will understand and I'm sure
14 they can read about it in the newspapers or watch TV.
15 But you can't. That's the hard part.

16 As you know, there are media people here, and
17 there may be a story in the paper. There may be
18 something on television. I don't know. But I'm
19 instructing you now that you are not to read anything
20 about this case in any periodical, paper, magazine or
21 otherwise, or watch anything about it on TV or the
22 Internet or anything else.

23 That's a tall order. I know it is. I know
24 it's difficult to follow. But please, if you're going
25 to sustain the integrity of the court system and our

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1 system of justice, you're just going to have to follow
2 these rules.

3 As I said, if you're really totally
4 interested in what the newspapers say or television or
5 something else, either clip them out and save them in a
6 scrapbook or have someone else record the TV so you can
7 look at it later. But while you are on this jury, you
8 will not have any contact or anything about this case
9 from any source whatsoever.

10 Is that clearly understood? I know it's
11 tough. But you're going to have to do it.

12 All right, folks. We'll see you back here
13 9:00 tomorrow?

14 MR. HEIM: 9:30, Your Honor?

15 THE COURT: 9:30. Same rules apply, folks.
16 Come in about 9:15 down at the jury pool. Check in at
17 the pool down there. We will check in with you.

18 As you leave today, leave your clip boards on
19 your seat and we will gather them.

20 (The panel of jurors exited the courtroom.)

21 THE COURT: We will all remain in attendance
22 until the jury has left.

23 Okay. Are they going into the jury room
24 first or what?

25 THE BAILIFF: Yes. I think they have some

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1 jackets and stuff.

2 THE COURT: They will be going down the
3 stairs anyway.

4 You all may leave, if you wish, unless the
5 lawyers have something they would like to talk about.
6 MR. HEIM: We have an issue to take up.
7 THE COURT: You folks may sit down and be at
8 ease or leave or whatever it is you want to do.
9 All right. Gentlemen, court is in session.
10 All right. Yes, sir?
11 MR. HEIM: Your Honor, I think we should go
12 sidebar with this perhaps.
13 (Proceedings were had at sidebar.)
14 (The sidebar conference was concluded, and
15 Court was adjourned at 3:00 p.m.)
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